

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

BRETT A. TURNQUIST,

Plaintiff,

vs.

TOM GREEN, C/O MRS.  
RANEY, C/O MR. BYRON,

Defendants.

CV 13-87-BLG-SEH-CSO

**ORDER AND FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE**

Plaintiff Brett Turnquist, a state prisoner currently incarcerated at the Montana State Prison in Deer Lodge, Montana, has filed an Amended Complaint pursuant to 42 U.S.C. § 1983 against Defendants Green, Raney, and Byron for failure to protect him from being raped by other inmates.

The Court has considered whether Turnquist's allegations are frivolous, malicious, fail to state a claim, or seek solely monetary relief from a defendant who is immune. *See* 28 U.S.C. § 1915(e)(2). The Amended Complaint makes no additional allegations against the Warden sufficient to demonstrate that he was aware of the alleged rapes prior to Turnquist being moved to a protective area. For the

reasons set forth in the Court's Order of December 9, 2013 (*ECF 6*), the Court will recommend the dismissal of Warden Tom Green.

With liberal construction, the Court cannot say that the allegations against Defendants Raney and Byron fail to state a claim upon which relief can be granted. The Court makes no conclusions about the truth of these allegations or about the strength of Turnquist's claims or of the evidence he might offer to corroborate them. The Court only finds that Turnquist has said enough to require a response from Defendants Raney and Byron.

Based on the foregoing, the Court issues the following:

### **ORDER**

1. Pursuant to Fed. R. Civ. P. 4(d), the Court will request Defendants Raney and Byron to waive service of summons of the Amended Complaint by executing, or having counsel execute, the Waiver of Service of Summons.<sup>1</sup> The Waiver must be returned to the Court within thirty (30) days of the entry date of this Order as reflected on the Notice of Electronic Filing. If these Defendants choose to return

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<sup>1</sup>Defendant Green will be recommended for dismissal and is not required to file a responsive pleading at this time.

the Waiver of Service of Summons, their answer or appropriate motion will be due within 60 days of the entry date of this Order as reflected on the Notice of Electronic Filing, pursuant to Fed. R. Civ. P. 12(a)(1)(B). *See also* 42 U.S.C. § 1997e(g)(2).

2. The Clerk of Court shall forward the documents listed below to:  
Mrs. Raney and Mr. Bryon, Dawson County Correctional Facility  
440 Colorado Blvd, Glendive, MT 59330

- \* Complaint (*ECF 2*);
- \* Order of December 9, 2013 (*ECF 6*);
- \* Amended Complaint (*ECF 7*);
- \* this Order,
- \* a Notice of Lawsuit & Request to Waive Service of Summons; and
- \* a Waiver of Service of Summons

Counsel for Defendants must file a “Notice of Appearance” as a separate document at the time an Answer or Rule 12 motion is filed. *See* D. Mont. L.R. 12.2.

3. Any party’s request that the Court grant relief, make a ruling, or take an action of any kind must be in the form of a motion, with an

appropriate caption designating the name of the motion, served on all parties to the litigation, pursuant to Federal Rules of Civil Procedure 7, 10, and 11. If a party wishes to give the Court information, such information must be presented in the form of a notice. The Court will not consider requests made or information presented in letter form.

4. Pursuant to Fed.R.Civ.P. 5(d)(1), all documents presented for the Court's consideration must be simultaneously served by first-class mail upon the opposing party or their counsel if the party is represented. Each party shall sign and attach a proper certificate of service to each document filed with the Court. The Certificate of Service must state the date on which the document was deposited in the mail and the name and address of the person to whom the document was sent. The sender must sign the certificate of service.

5. Turnquist must not make any motion for default until at least seventy (70) days after the date of this Order.

6. Pursuant to Local Rule 26.1(d), no party may begin discovery until a Scheduling Order has been issued.

7. At all times during the pendency of this action, Turnquist must

immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

Further the Court issues the following:

### **RECOMMENDATION**

Defendant Tom Green should be dismissed.

### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Turnquist may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.<sup>2</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a),

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<sup>2</sup>As this deadline allows a party to act after the Findings and Recommendations is “served,” it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

should not be filed until entry of the District Court's final judgment.

DATED this 5th day of June, 2014.

/s/ Carolyn S. Ostby  
United States Magistrate Judge

**NOTICE OF LAWSUIT AND REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS**

TO: Mrs. Raney and Mr. Bryon  
Dawson County Correctional Facility  
440 Colorado Blvd  
Glendive, MT 59330

A lawsuit has been commenced by an incarcerated pro se plaintiff against you. A copy of the Complaint and Amended Complaint are attached to this notice. They have been filed in the United States District Court for the District of Montana, Civil Action No. CV-13-00087-BLG-SEH-CSO. The Court has completed its pre-screening and concludes that these Defendants must file a responsive pleading. *See* 42 U.S.C. § 1997e(c), (g)(2); 28 U.S.C. §§ 1915(e)(2), 1915A(a), (b).

This is not a formal summons or notification from the Court, but rather a request that you sign and return the enclosed waiver of service in order to save the cost of service by the U.S. Marshal's Service. The cost of service will be avoided if you return the signed Waiver of Service of Summons within 30 days from the date the Order directing this Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

If you comply with this request and return the waiver to the Court, it will be filed with the Court and no summons will be served. The action will then proceed as if you had been served on the date the waiver is filed, except that you must file an answer or appropriate motion before 60 days from the date the Order directing this Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

If you do not wish to waive service, please indicate this on the Waiver of Service of Summons form. The Court will, in turn, order the U.S. Marshal's Service to serve the Complaints on you personally and may impose the full costs of such service.

/s/ Carolyn S. Ostby  
United States Magistrate Judge

## WAIVER OF SERVICE OF SUMMONS

TO: The U.S. District Court for the District of Montana

The following Defendants acknowledge receipt of your request that they waive service of summons in the following action: *Turnquist v. Raney and Byron*, Civil Action No. CV-13-000-87-BLG-SEH-CSO filed in the United States District Court for the District of Montana. Defendants have also received a copy of the Complaint and Amended Complaint. I am authorized by the following Defendants to agree to save the cost of service of a summons and additional copies of the complaints in this action by not requiring the following individuals be served with judicial process as provided by Fed.R.Civ.P. 4:

\_\_\_\_\_;

\_\_\_\_\_;

The above-named defendants retain all defenses or objections to the lawsuits or to the jurisdiction or venue of the Court except for objections based on a defect in the summons or in the service of the summons. I understand that judgments may be entered against the above-named defendants if an answer or motion under Fed.R.Civ.P. 12 is not served within 60 days after the date the Order directing the Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

I decline to waive service on behalf of the following defendants:

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED/TYPED NAME

\_\_\_\_\_  
ADDRESS